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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. J. E. McDonald, Commissioner  
Department of Agriculture  
Austin, Texas

Dear Sir:

Opinion No. 0-1412

Re: Does the Department of Agriculture in meeting the responsibilities imposed upon the Commissioner by H. B. 12 have the authority to use a portion of the contingent of the Jack and Stallion Division to meet the expenses incurred in placements and transportation of the jacks and stallions?

Your request for an opinion of this Department, on the following situation, has been received:

"In the administration of H. B. 12, Acts of the First Called Session of the 45th Legislature, the Commissioner of Agriculture is charged with the responsibility of placing state owned jacks and stallions with caretakers on an annual lease basis. These placements are started on July 1st of each fiscal year and during the year it is necessary to make many transfers of these animals to new caretakers. Also it happens, or at least it has happened in the past, some of these animals have become unfit for services. They must be taken over by the Commissioner and turned over to the Board of Control for the board to dispose of same.

"Naturally there is an expense incurred in the placements and transportation of such animals, such as gasoline, oil, car and trailer repairs and room and meals.

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"The completed appropriation bill does not provide any traveling expense. Will you please advise if the Department of Agriculture in meeting the responsibilities imposed upon the Commissioner by the provisions of H. B. 12 has the authority to use a portion of the contingent of the Jack & Stallion Division to meet the above mentioned expense.

"Finally, we are charged with the above mentioned responsibilities as pointed out, and if we meet such responsibilities and incur such expenses, how are we to pay the same?"

Article 51 of Vernon's Annotated Civil Statutes, (H. B. 12, Acts of the 45th Leg., 1937) provides for the leasing of state-owned jacks and stallions; the appointment of caretaker; rules and regulations; title to the animals to remain in state; allocation to Texas Prison System; annual rental charge; bond; contracts, a special Jack and Stallion Fund; disposition of said fund; transferal of fund; and use of fund.

We quote below certain provisions of this Act, which indicate a legislative intent that the monies in the special Jack and Stallion Fund be used for expenses incurred in the leasing and distribution, transportation and disposition of state-owned jacks and stallions. The following provisions of Article 51 will be helpful in throwing light upon the appropriation for the Jack-Stallion Division in the General Departmental Appropriation Bill of the Forty-sixth Legislature, i. e., Senate Bill 427:

"Section 1. From and after the date of September 1, 1937, the Commissioner of Agriculture of the State of Texas is hereby directed and authorized to distribute throughout the State of Texas, on a lease basis as hereinafter provided, the jacks and stallions purchased by the State of Texas \* \* \*". The Commissioner of Agriculture shall adopt and carry out reasonable rules and regulations with respect to the leasing and distribution, care, use and maintenance of such

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animals. Provided further that the title of all such jacks and stallions hereinbefore mentioned shall be and remain in the State of Texas.\* \* \*

"Sec. 2. From and after the effective date of this Act the Commissioner of Agriculture shall distribute the jacks and stallions aforesaid throughout the State of Texas where there is most need shown to competent and capable caretakers who shall agree and pay to the State of Texas the sum of Thirty Dollars (\$30) in advance as an annual rental for the use of such jack or stallion, as the case may be, and who shall first enter into a written contract with the Commissioner of Agriculture all such conditions and terms as may be determined by the Commissioner. \* \* \*

"Sec. 3. The money derived from the leasing of the animals hereinabove mentioned shall be deposited by the Commissioner of Agriculture in the State Treasury where it shall be set up as a 'Special Jack and Stallion Fund' to be used by the Commissioner to pay the salaries of two (2) competent supervisors at not to exceed Eighteen Hundred Dollars (\$1800) per year each for salaries and who shall receive the actual and necessary traveling expenses while away from Austin in the performance of their duties, which expenses shall not exceed amounts allowed other state employees under the terms and provisions of Senate Bill 138, Acts of the Forty-fifth Legislature, Regular Session, 1937, and in no event shall the salaries and expenses herein authorized exceed the amount collected annually from the lease or hire of animals as herein provided,

"Sec. 4. All moneys now on hand and accruing to the Jack and Stallion Account under H. B. 779, Acts of the Forty-fourth Legislature, Regular Session, and amended by H. B. 8, Chapter 495, Forty-fourth Legislature, Third Called Session,

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are hereby transferred to the Special Jack and Stallion Fund to be used by the Commissioner of Agriculture for making refunds on breedings heretofore reported in conformity with refunding provisions of H. B. 779, Acts of the Regular Session of the Forty-fourth Legislature, and for the payment of all other expenses incurred in the administration of this Act, subject to the biennial appropriation for the year ending August 31, 1939.\* \* \*

The Legislature recognized that the leasing, distribution, transportation and disposition of state-owned jacks and stallions would entail considerable expense. It made its intent clear that the monies in the Jack-Stallion Fund were to be used for the payment of all expenses incurred in the administration of the Act. The jacks and stallions of the state are a valuable property and demand considerable attention. While in possession of the lessee, the state-owned jacks and stallions might or might not receive adequate care. It is a responsibility of the Commissioner of Agriculture to see that state-owned jacks and stallions are properly maintained and receive proper treatment. A lessee of a jack or stallion is not required by law to pay the expense attached to the lease proceeding, the transportation charged, or the care of the animal while it is being transported. The jacks and stallions inspector must see that the animals are properly cared for when they are not in the possession of the lessee or when they are being transferred from one lessee to another, if and when such transfers occur.

We have exhaustively treated the Jack-Stallion Appropriation under Senate Bill 427 in our opinion No. O-1220. Giving effect to the Governor's veto, we held that there were a specific appropriation of \$1800. per year for an inspector (64-b), and \$1950. a year for rent, heat, light, postage, printing, telephone, supplies, and contingent, etc., and in addition to the itemized appropriation, a lump sum appropriation of "all fees and/or unexpended balances" in the Jack-Stallion Fund "for the enforcement" of House Bill 12.

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The question before us is whether or not monies in the \$1950. item designated as "rent, light, heat, postage, printing, telephone, supplies and contingent" (underscoring ours) may be used by the Commissioner of Agriculture in meeting the responsibilities imposed upon him under H. B. 12 in the placement and transportation of the state-owned jacks and stallions and in taking care of expenses incurred in making placement and transportation.

Expenses connected with the leasing, placement, and transportation of jacks and stallions, such as gasoline, oil, car and trailer repairs, are necessary and essential to the enforcement of H. B. 12. Such expenses are difficult to estimate and itemize. Yet they were definitely within the contemplation of the Legislature. As such they fall properly within the category of contingent funds which are to be spent not for enumerated items or purposes, but for contingencies not capable of being specifically and definitely set out by the Legislature.

As for traveling expenses incurred in connection with leasing, placement and transportation, we refer you to conference opinion No. 3089 of this Department written by Hon. Richard W. Fairchild. This opinion authorizes traveling expenses to be paid out of "contingent expenses" where a department or division of a department is not provided specifically with an item for "traveling expenses." On the basis of this opinion the Department of Agriculture may use the "contingent fund" of the Jack-Stallion Division for traveling expenses, such as mileage, room and meals, incurred in the leasing, transportation and placement of state-owned jacks and stallions.

Trusting that we have fully answered your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Dick Stout

Assistant

DS:ob APPROVED OCT. 4, 1939

APPROVED OPINION COMMITTEE  
BY B. W. B. CHAIRMAN

W. F. MOORE  
FIRST ASSISTANT

ATTORNEY GENERAL